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*Attorneys for Defendant  
Carriage Cemetery Services, Inc.*

**UNITED STATES DISTRICT COURT  
FOR THE STATE OF NEVADA**

RHONDA COLLINS, an individual,  
Plaintiff,

vs.

CARRIAGE CEMETERY SERVICES, INC., doing  
business as BUNKER'S MEMORY GARDENS  
MEMORIAL PARK, DOES 1 through 100; and  
ROE CORPORATION 101 through 200, inclusive,  
Defendants.

**Case No.**

**NOTICE OF REMOVAL**

**JURY DEMANDED**

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Carriage Cemetery Services, Inc. dba Bunker's Memory Gardens Memorial Park ("Carriage")<sup>1</sup>, gives notice of removal of this action, *Rhonda Collins v. Carriage Cemetery Services, Inc., et al*, Case No. A-22-847341-C, from the Eighth Judicial District Court of Clark County, Nevada, to the United States District Court for the District of Nevada. Plaintiff Rhonda Collins's ("Plaintiff") Complaint is attached as **Exhibit A**. As grounds for removal, Carriage states as follows:

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<sup>1</sup>Carriage Services of Nevada, Inc. was originally named in Plaintiff's Complaint but was subsequently voluntarily dismissed by Plaintiff prior to this filing.



1           7. For purposes of diversity jurisdiction, a corporation is “a citizen of every State and  
2 foreign state by which it has been incorporated and of the State or foreign state where it has its  
3 principal place of business.” 28 U.S.C. § 1332(c)(1).

4           8. Carriage is not a citizen of Nevada, although Plaintiff’s Complaint erroneously  
5 alleges that it is. See Declaration of Larry Davis (“Davis Decl.”), attached as **Exhibit B**, at ¶ 4.  
6 Carriage is, and at the time of the filing of this action was, a corporation organized under the laws  
7 of Texas with its principal place of business also in Texas. *Id.* at ¶ 3. Therefore, Carriage is, and  
8 at the time of the filing of this action was, a citizen of Texas.

9           9. Furthermore, for purposes of removal under 28 U.S.C. § 1441, *et seq.*, the  
10 citizenship of defendants sued under fictitious names is disregarded. See 28 U.S.C. § 1441(a).

11           10. Because Plaintiff is a Nevada citizen and Carriage is a citizen of Texas, complete  
12 diversity exists between Plaintiff and Carriage. See 28 U.S.C. §§ 1332(a), 1441(b)(1).

## 13       **II. The Amount in Controversy Exceeds \$75,000.**

14           11. Plaintiff’s claims satisfy the amount-in-controversy requirement set forth in  
15 28 U.S.C. § 1332(a).

16           12. Nevada rules provide, if the pleader seeks more than \$15,000 in monetary damages,  
17 the demand for relief may request damages “in excess of \$15,000” without further specification of  
18 the amount. See NRCP 8; *see also* Compl. at ¶ 24.

19           13. Where, as here, a complaint does not set forth a specific amount of damages, “a  
20 defendant’s notice of removal need include only a plausible allegation that the amount in  
21 controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v.*  
22 *Owens*, 574 U.S. 81, 89 (2014); *see also Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 406  
23 (9th Cir. 1996) (applying the preponderance of the evidence standard). “[T]he defendant’s amount-  
24 in-controversy allegation should be accepted when not contested by the plaintiff or questioned by  
25 the court,” and “[e]vidence establishing the amount is required by § 1446(c)(2)(B) only when the  
26 plaintiff contests, or the court questions, the defendant’s allegation.” *Dart Cherokee Basin*  
27 *Operating Co.*, 574 U.S. at 87-89; *see also Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373,  
28 377 (9th Cir. 1997) (Where a complaint does not allege a specific amount of damages, “the district

1 court may first consider ‘whether it is facially apparent from the complaint that the jurisdictional  
2 amount has been satisfied’”). Here, the nature and gravity of Plaintiff’s allegations and Plaintiff’s  
3 alleged medical expenses make it facially apparent that the amount in controversy requirement has  
4 been satisfied.

5 14. Specifically, Plaintiff seeks several categories of damages based on her “severe  
6 damages,” including actual and compensatory damages, medical expenses, wage loss, loss of  
7 household services, pain and suffering, and attorney’s fees. *See* Compl. at ¶¶ 23-24; Prayer for  
8 Relief.

9 15. Moreover, “If a complaint does not specify an amount in controversy, the defendant  
10 must prove by a preponderance of the evidence that the amount in controversy exceeds  
11 \$75,000.” *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699, 701 (9th Cir. 2007). “The Court  
12 may look to the facts alleged in the removal petition or summary judgment-type evidence submitted  
13 by the parties to determine whether the jurisdictional requirement was met at the time of  
14 removal.” *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003). In  
15 doing so, removing parties may use documents such as a demand letter to show the amount is  
16 controversy is met. *See Smith v. Smith's Food & Drug Centers, Inc.*, 2:14-CV-00681-APG, 2014  
17 WL 3734363, at \*1 (D. Nev. July 29, 2014) (“A settlement letter is relevant evidence of the amount  
18 in controversy if it appears to reflect a reasonable estimate of the plaintiff's claim.” *Cayer v. Vons*  
19 *Companies*, 2:16-CV-02387-GMN-NJK, 2017 WL 3115294, at \*3 (D. Nev. July 21, 2017) (citing  
20 *Cohn v. PetSmart, Inc.*, 281 F.3d 839, 840 (9th Cir. 2002) and *Dominguez v. Ralphs Grocery Co.*,  
21 No. 2:13–CV–2233–GMN–PAL, 2014 WL 4162378, at \*2 (D. Nev. Aug. 20, 2014)).

22 16. In *Smith v. Smith's Food & Drug Centers, Inc.*, this Court relied on a pre-litigation  
23 demand letter in a slip and fall case, requesting \$110,000, and determined that removal was proper  
24 and the amount in controversy was met. *See* 2014 WL 3734363, at \*2 (D. Nev. July 29, 2014).  
25 The demand letter in *Smith* alleged that, while the plaintiff had not yet incurred more than \$75,000  
26 in medical bills, she had a scheduled shoulder surgery, future medical expenses, lost wages, and  
27 pain and suffering, and the case was properly removed. *See id.*

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17. Like in *Smith*, Plaintiff sent Carriage’s insurance company a pre-litigation demand letter on January 27, 2022. *See* Demand Letter, attached as **Exhibit C**. This demand letter outlines Plaintiff’s treatment for her alleged injuries. Specifically, Plaintiff alleges that she was transported by ambulance to University Medical Center for “severe knee pain” following the alleged incident. *See id.* at 2. She alleges that she suffered a “displaced comminuted fracture of left patella” and had a “surgical repair of the patellar fracture, ORIF with two screw placement.” *Id.* She also alleges that she had a “series of occupation and physical therapy regimens,” and she “continues [sic] to follow up with her orthopedic and undergo physical therapy.” *Id.* at 2-3. Furthermore, Plaintiff’s demand letter alleges that she was “**bedbound for an extended period of time, until she was able to gain enough stretgth [sic] to indpeendantly [sic] get up. Rhonda had to seek the assistance and support of freidns [sic] and family to help care for her, help her bathe, make food, keep house, and help her ambulate. This has severely affected Rhonda’s ability to be independent and move freely and she still cotninue [sic] to suffer from daily pain and discomfort which will cotnionue [sic] to affect her for the foreseeable future.**” *Id.* at 3 (emphasis in original). Finally, she alleges she missed 1-2 months of work. *Id.*

18. The letter outlines **\$118,921.00** in past medical bills—an amount alone that exceeds the jurisdictional threshold—and the records and bills for care from Gerlad Sylvain, M.D. and Good Life Physical Therapy are not included in that calculation. *Id.*.

19. Furthermore, Plaintiff made a demand in excess of the jurisdictional removal threshold: “**Demand is hereby made for \$800,000.00 or YOUR FULL POLICY LIMITS whichever is less. Please offer your policy limits so we can present that offer to our client.**” *Id.* (emphasis in original).

20. Plaintiff in this case makes the same allegations as in *Smith*, including that she will incur future medical expenses and physical therapy, and a lifetime of pain. *See* Compl. at ¶ 24; Prayer for Relief; *see also* Demand Letter at 2-3. Moreover, Plaintiff’s medical expenses here—\$118,921.00—alone exceed the jurisdictional threshold, with more bills alleged to be added to the calculation.

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21. Further, the plaintiff's demand in *Smith* (\$110,000) is almost 8 times lower than Plaintiff's demand (\$800,000) here. *See id.*

22. While Carriage does not concede that it is liable for any of the tortious conduct alleged that would warrant the imposition of any damages alleged by Plaintiff, based on the medical expenses alleged and Plaintiff's demand, the amount in controversy exceeds \$75,000 and removal is proper.

23. Based on Plaintiff's Complaint, allegations of several categories of damages, including future medical expenses, lost wages, pain and suffering, and a lifetime of pain, alleged medical expenses already incurred in the amount of \$118,921.00, and her demand letter requesting \$800,000, the amount in controversy exceeds \$75,000, exclusive of interest and costs.

### **III. All Other Removal Requirements Are Satisfied.**

24. The Notice of Removal is timely and properly filed pursuant to 28 U.S.C. § 1446(6).

25. Carriage was served with the Summons and Complaint on May 2, 2022.

26. Removal pursuant to 28 U.S.C. § 1441(a) requires that "all defendants who have been properly joined and served must join in or consent to the removal of the action," which is met here. 28 U.S.C. § 1446(b)(2)(A). The unidentified Doe and Roe defendants are not required to consent to removal. *See Hafiz v. Greenpoint Mortg. Funding*, 409 F. App'x 70, 72 (9th Cir. 2010) (nominal parties are not required to consent to removal).

27. Carriage is providing Plaintiff with written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(d).

28. Pursuant to 28 U.S.C. § 1446(d), Carriage is filing a copy of this Notice of Removal with the Clerk of the District Court of Clark County, Nevada.

29. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, orders and other papers filed in the state court action—as available from the state court docket or otherwise made available to Carriage at the time of filing this Notice—are attached hereto as **Exhibit D**.

30. The written notice required by 28 U.S.C. § 1446(d), attached hereto as **Exhibit E**, will be promptly filed in the Eighth Judicial District Court of Clark County, Nevada, and will be promptly served on Plaintiff.

1           31. By filing this Notice of Removal, Carriage does not waive any defense that may be  
2 available to them and reserve all such defenses, including but not limited to those related to service  
3 of process and lack of personal jurisdiction. If any question arises regarding the propriety of the  
4 removal to this Court, Carriage requests the opportunity to present a brief oral argument in support  
5 of their position that this case has been properly removed.

6           32. No previous application has been made for the relief requested herein.

7 **IV. Demand for Jury Trial.**

8           33. Carriage hereby demands a separate jury trial on all claims and issues so triable.

9 **CONCLUSION**

10           WHEREFORE, Carriage gives notice that the matter bearing Case No. A-22-847341-C,  
11 pending in the District Court of Clark County, Nevada, is removed to the United States District  
12 Court for the United States District Court for the District of Nevada, and request that this Court  
13 retain jurisdiction for all further proceedings in this matter.

14           DATED: May 23, 2022.

15  
16 **EVANS FEARS & SCHUTTERT LLP**

17 /s/ Chad R. Fears

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22  
23 *Attorneys for Defendant*

*Carriage Cemetery Services, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of **NOTICE OF REMOVAL** was served on counsel of record this 23<sup>rd</sup> day of May, 2022 using the Court's CM/ECF System.

/s/ Faith Radford  
An Employee of Evans Fears & Schuttart LLP